*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION Nos.14181 and 14461 of 2004

%27-08-2004

R.JAYALAKSHMAMMA

..PETITIONER

Vs.

$ THE ELECTION TRIBUNAL-CUM-SENIOR CIVIL JUDGE, PUNGANUR, CHITTOOR DISTRICT AND OTHERS

..RESPONDENTS

!COUNSEL FOR PETITIONER: MR. MR.C.RAMACHANDRA REDDY

^ COUNSEL FOR RESPONDENTS 2&3: A.K.NARASIMHA RAO

<GIST

>HEAD NOTE:

?CASES REFERRED:

1. 2003 (1) ALD 488
2. (2002) 5 SCC 568
3. AIR 1964 SC 477
4. (1992) 2 SCC Supp.312
5. 1996 (1) ALT 32 (DB)
6. 1996 (1) ALT 32 (DB
7. (2004) 4 SCC 714 = 2004 AIR SCW 3888
8. AIR 1965 SC 282
9. AIR 1988 SC 1796

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY SEVENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NOs : 14181 and 14461 of 2004

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WRIT PETITION NO : 14181 of 2004

Between:

R.Jayalakshmamma W/o. P.Ramakrishna
R/o. Marrimakulapalli, Kagathi Post, Chowdepalli Mandal,
Chittoor District.

..... PETITIONER

AND

1 The Election Tribunal-Cum- Senior Civil Judge, Punganur, Chittoor District.
2 M.Chandravadana W/o. M.Venkataramana Raju
R/o. Chowdepalli Village Post and Mandal, Chittoor District.
3 M.Jyothi W/o. Rathnappa
R/o. Chowdepalli Village Post and Mandal Chittoor District.
4 Election Officer-Cum-Chief Executive Officer, Zilla Parishad, Chittoor.
5 Election Officer, Chowdepally Mandal, Chittoor District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Certiorari calling for the records in O.P.No.14/2001 dt.3.8.2004 on the file of the 1st respondent Tribunal namely the Election Tribunal-Cum-Senior Civil Judge, Punganur, Chittoor District and quash the same as illegal arbitrary, unconstitutional and without jurisdiction.

Counsel for the Petitioner: MR.C.RAMACHANDRA REDDY

Counsel for the Respondent Nos.2&3:A.K.Narasimha Rao

WRIT PETITION NO : 14461 of 2004

Between:

R. Jayalakshmamma, W/o. P. Ramakrishna,
Hindu, R/o. Marrimakulapalli, Kagathi Post, Chowdepalli Mandal, Chittoor District.

..... PETITIONER

AND

1 The Election Tribunal-cum-- Senior Civil Judge, Punganur, Chittoor District.
2 M. Jyothi, W/o. Rathnappa,
Hindu, R/o. Chowdepalli Village Post and Mandal, Chittoor District.
3 M. Chandravadana, W/o. M. Venkataramana Raju,
Hindu, R/o. Balasamudram Village,
Pandillapalli, Chowdepalle Mandal, Chittoor District.
4 Election Officer-cum-Chief Executive Officer, Zilla Parishad, Chittoor District.
5 Election Officer, Chowdepally Mandal, Chittoor District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for the records in O.P.NO. 12/2001 dt. 3-8-2004 on the file of the 1st respondent Tribunal namely the Election Tribunal-cum-Senior Civil Judge, Punganur, Chittoor District and quash the same as illegal, arbitrary, unconstitutional and without jurisdiction.

Counsel for the Petitioner: MR.C.RAMACHANDRA REDDY

Counsel for the Respondent Nos.2&3: A.K.Narasimha Rao

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NOs.14181 and 14461 and 2004

COMMON ORDER:

Introduction

These two Writ Petitions are filed seeking a Writ of Certiorari to quash the common order of the Election Tribunal-cum-Senior Civil Judge, Punganur, in O.P.Nos.12 and 14 of 2001, dt.3.8.2004. Hence, both the Writ Petitions are being disposed of by this common order. By the impugned order, the learned Election Tribunal set aside the election of the petitioner as Zilla Parishad Territorial Constituency (ZPTC) Member of Chowdepalle Mandal and further declared, Smt.Chandravadana, W/o.Venkataramana Raju (second respondent in Writ Petition No.14181 and third respondent in Writ Petition No.14461 of 2004), as duly elected candidate of ZPTC Member of Chowdepalle Mandal. In this common order, the parties shall be referred to by their status in Writ Petition No.14461 of 2004.

In consonance with Part IX of the Constitution of India, Andhra Pradesh Panchayat Raj Act, 1994 (for short, the Act) envisages three-tier Panchayat Raj system. The apex tier constituted under Section 177 of the Act is called, Zilla Parishad. It consists of Zilla Parishad Territorial Constituencies and as per Section 178 of the Act every Mandal in the District shall be a territorial constituency and members are elected by method of secret ballot by the registered voters in the territorial constituency concerned (See Section 179). Sections 183 and 184 deal with qualification and disqualification of the candidates respectively. Sub-section (1) of Section 184, disqualifies a person to be a member ZPTC if such candidate is interested in a subsisting contract with Mandal Parishad or Zilla Parishad. Sub-section (2) of Section 184 applies the provisions of Sections 18 to 22 of the Act to ZPTC Member as they apply to a Member of Gram Panchayat. Be it noted under Section 19(3), a person having more than two children shall be disqualified for election as Member. The first proviso to sub-section (3) contains an exception to the general rule. It provides that if the birth of additional child (third child) is within one year from the date of commencement, the same shall not be taken into consideration for the purpose of Section 19(3) of the Act. The Act came into force on30.05.1994, as notified by the Government of Andhra Pradesh vide G.O.Ms.No.304 dated 25.05.1994. The second proviso to sub-section (3) of Section 19 further clarifies that a person having more than two children excluding the additional third child born within one year from the date of commencement of the Act shall not be disqualified so long as the number of the children on the date of commencement does not increase. Therefore, if the additional/third child is born to a person between the period 30.05.1994 to 29.05.1995, the same shall have no effect on the general principle and still such person can contest the election. If a person has three children including additional third child born after 29.05.1995 such person shall be disqualified for being elected as Member of any panchayat body under the Act

including Zilla Parishad.

Background Facts

The election for Chowdepalli ZPTC was held on 12.7.2001. The petitioners, respondents 2 and 3 were the three candidates in the fray as they only filed valid nominations. The counting took place on 17.1.2001 and the petitioner was declared elected for ZPTC Member, Chowdepalle. As per Section 233 of the Act no election held under the Act shall be called in question except by way of an election petition presented to such authority in accordance with the Rules as may be made in that behalf. The Government of Andhra Pradesh in exercise of their powers under Section 233 and Section 268(1) of the Act have promulgated the Rules called, 'the Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (for short, the Rules). Second respondent filed such election petition being O.P.No.12 of 2001 praying the learned Election Tribunal to set aside the election of the petitioner as Member of Chowdepalle ZPTC by declaring the election as null and void and further declare the petitioner as disqualified to contest. Third respondent filed O.P.No.14 of 2001 praying the learned Tribunal to set aside the election of the petitioner and declare the third respondent as duly elected ZPTC Member of Chowdepalle. Both the OPs were filed on similar grounds.

Ms.M.Jyothi and Ms.M.Chandravardana, respondents 2 and 3, alleged in their respective OPs that the petitioner played fraud and misrepresentation on the Election Officer by submitting a declaration that she is not disqualified to contest for the office or ZPTC Member, that she gave birth to three children, by name Mahidhar, who was born on 18.1.1987, Maruthi, who was born on 24.1.1989 and Yamini Divya, who was born on 8.7.1995, that the third child of the petitioner was born on 8.7.1995 as per the date of birth certificate issued by the Child Development Project Officer of Integrated Child Development Scheme (ICDS) Project, Punganur and therefore under Section 184(2) read with Section 19(3) of the Act the petitioner is disqualified to file the nomination as she is having three children at the time of filing her nomination.

The petitioner herein filed a counter to the OPs denying the allegation. She disputed the date of birth certificate given by the Project Officer of ICDS Project, Punganur on the ground of competence of the Project Officer of ICDS Project, Punganur to issue such certificate. She asserted that as per school records the date of birth of third child is 16.3.1995 and that Yamini Divya was born on 16.3.1995 at Vijaya Nursing Home, Madanapale and when the same was intimated to the concerned authorities who duly entered in the birth register in the office of Madanapalle Municipality. The petitioner also filed additional counter affidavit reiterating that she gave birth to third child on 16.3.1995 and therefore she falls in the excepted category under first proviso to Section 19(3) of the Act. She also stated that earlier she contested for the office of MPTC Member, Chowdepalli and nobody in the Mandal raised any objection regarding disqualification at the time of election of MPTC Member of Kagathi. The pleadings of the petitioner herein in both the OPs were same.

The learned Tribunal clubbed both the OPs and recorded evidence in O.P.No.12 of 2001. Second respondent (petitioner in O.P.No.12 of 2004) examined herself as P.W.1 besides P.Ws.2 to 7 and marked Ex.A.1, which is the certificate issued by B.Ramadevi in the office of ICDS Project. Third respondent examined herself as R.W.1 and her brother-in-law (M.Ramakrishnam Raju) as R.W.2. She summoned Mr. S. Ravindra Babu, the Commissioner of Madanapalli Municipality, who is examined as C.W.1, and Dr.Ananda Babu, owner and proprietor of Vijaya Nursing Home, Madanapalli, who was examined as C.W.2 and Mr.M.R.Jayaprakash, C.W.3. Third respondent also marked Exs.B.13 to B.17. Exs.X.1 to X.33 were marked through C.W.1, C.W.2 and C.W.3. The petitioner herein examined herself as R.W.3 and no other witness was examined on her behalf. The learned Tribunal considered the following points.

1. Whether the first respondent is disqualified to contest for the post of Membership of ZPTC, Chowdepalle Mandal under Section 19(3) of A.P.Panchayat Raj Act, 1994 ?
2. Whether the petitioner is entitled to declaration as prayed for by her ?
3. To what relief ?

On the first point, learned Tribunal came to the conclusion that the respondents 2 and 3 herein established that petitioner gave birth to her third child on 8.7.1995 and not on 16.3.1995 as pleaded by her and that she is disqualified to file the nomination for the office of ZPTC Member, Chowdepalle. On the second point, as the petitioner in O.P.No.12 of 2001 did not seek declaration as elected, the learned Tribunal declared the petitioner in O.P.No.14 of 2001, (third respondent herein) as elected Member of ZPTC, Chowdepalle. Both the OPs were accordingly allowed. Be it noted that the learned Tribunal relied on evidence of P.Ws.1, 3, 4 and 7, R.Ws.1 and 2, C.W.1, and various documents marked as exhibits during trial and essentially considered the disputed question of fact as was incumbent on the learned Tribunal.

Aggrieved by the common judgment of the learned Tribunal, petitioner filed these two Writ Petitions. When Writ Petition No.14181 of 2004 came up before my learned brother Hon'ble Sri Justice B.Prakasha Rao, His Lordship while ordering to maintain status quo as on that date, observed that having regard to the fact that the Writ Petition arises out of the final orders passed in the election petition, the matter shall be decided finally at the stage of admission itself as agreed by the parties. Subsequently, Writ Petition No.14461 of 2004 filed against O.P.No.12 of 2001 came up before me when this Court directed to tag this Writ Petition with earlier Writ Petition. With the consent of the parties, the matters were heard at length on 17.8.2004, 18.8.20904 and 19.8.2004. This Court also obtained original record from the Court of Senior Civil Judge, Punganur, who decided the election petitions. The learned Senior Counsel for the petitioner and the learned counsel for respondents 2 and 3 also perused the record.

Submissions

Sri K.Pratap Reddy, learned Senior Counsel for the petitioner submits that having approached the Tribunal, alleging disqualification of the petitioner under Section 19(3) of the Act, the burden was on respondents 2 and 3 herein, to prove their allegation and that they failed to produce cogent and convincing evidence. On the contrary, the petitioner has produced clinching evidence including the records kept and maintained during the course of official business and that the learned Tribunal committed error in accepting the evidence, which is not permissible in law, and rejecting the evidence which ought to have been accepted. Learned Senior Counsel would urge that the learned Tribunal considered the matter in a wild way ignoring the relevant evidence on record. To sustain the prayer for a Writ of Certiorari, he placed strong reliance on Exs.B.2, B.9, B.20, X.22, X.23, X.24 and evidence of Municipal Commissioner, C.W.1. He would also contend that the evidence of P.W.3, Anganwadi worker, who produced Ex.A.1, X.1 and X.2 is mere hearsay evidence and therefore, the learned Tribunal committed grave error apparent on the face of the record in concluding that third child of petitioner was born on 8.7.1995. The learned Senior Counsel also submits that the standard of proof required in election petition is higher than in a civil proceeding and evidence on record is not sufficient to hold against petitioner. He placed reliance on a decision of learned Single Judge of this Court in **J.Puspalatha v. Election Tribunal, Bhongir**. Lastly the learned Counsel placing reliance on the decision of the Supreme Court in **Prakash Khandre v. Dr.Vijay Kumar Khandre** contends that granting declaration in favour of third respondent especially when there are more than two candidates in the election was impermissible under law.

Per contra, learned counsel for respondents 2 and 3, Sri A.K.Narasimha Rao, submits that the lower Tribunal has decided the matter based on record after due appreciation of evidence and therefore it is not permissible for this Court to re-appreciate the evidence in this Writ Petition for Certiorari. He would also urge that there is abundant evidence to conclude that third child of the petitioner was born on 8.7.195 and therefore, she is disqualified under Section 19(3) read with Section 184(2) of the Act. He placed strong reliance on evidence of P.Ws.3, 4, 7, C.Ws.1, 2 and 3, Exs.B.6, B.7, B.8 and B.20, and X.14 to X.22 and X.24 in support of the contention that petitioner delivered third child at Vijaya Nursing Home, Punganur, on 8.7.1995 and that the contention of the petitioner that she delivered third child on 16.3.1995 Vijaya Nursing Home, Madanapale is false and incorrect.

Point for Consideration

The point that arises for consideration is whether the learned Senior Civil Judge-cum-Election Tribunal under the Act has committed grave error apparent on the face of the record in setting aside the election of the petitioner ?

This broad issue for adjudication would also take in its fold the question of burden of proof, the question of Tribunal considering or not considering relevant and irrelevant material and the question of alleged perversity and findings by the Tribunal.

Principles of Judicial Review

At the outset the principles and the scope of power of judicial review to quash a decision of statutory tribunal may briefly be reiterated. It is well settled that while judicially reviewing the decision of a statutory tribunal, High Court ordinarily does not substitute its opinion for the opinion or finding recorded by the Tribunal on appreciation of oral and documentary evidence. Merely because other view is also possible from such reappreciation of same evidence, it cannot be a ground for High Court to deviate from the finding of the fact recorded by the Tribunal, re-appreciate the evidence on record and give its own finding which is different from the finding recorded by the Tribunal. It is axiomatic that the Court of judicial review is not an appellate Court and the Court essentially reviews the decision making process rather than decision itself. Nonetheless, it is also settled that when the question is raised that the tribunal has committed jurisdictional error or committed grave error apparent on the face of the record while appreciating the evidence, recording findings of fact and applying law to such findings on fact, the Court of judicial review can always; curiously though, - look into the evidence to see whether the finding of fact is perverse and whether the proper principles of appreciation of evidence have been applied to the facts. Even after such exercise, if the Court finds that the findings are grounded on substantially acceptable evidence, the findings cannot be upset and reappreciation of evidence as an appellate Court is not within the purview of judicial review.

Yet another well settled principle is that it is not every error can be corrected in judicial review. Only grave error apparent on the face of the record would be amenable for judicial scrutiny. A reference may be made to a Constitution Bench Judgment of the Supreme Court in **Syed Yakoob v. Radhakrishnan, H.B.Gandhi v. Gopi Nath**, and a Division Bench Judgment of this Court in **The Depot Manager, A.P.S.R.T.C. v. P.Gangarajulu.**

In **Syed Yakoob v. Radhakrishnan** (supra) the Supreme Court held that a Writ of Certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals when such tribunals passed orders without jurisdiction; passed orders in excess of jurisdiction; and failed to exercise such jurisdiction. While observing that in exercising Certiorari jurisdiction, the court is not entitled to act as an appellate authority, it was held that Writ of Certiorari cannot be issued unless the tribunal acts illegally or improperly, as for instance, it decides the question without giving opportunity of being heard to the party effected by the order or the procedure adopted by the tribunal is opposed to principles of natural justice. The principle that the findings of fact reached by the inferior Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in Writ proceedings was reaffirmed and it was held that only when there is error of law apparent on the face of the record, the Court can interfere in such matters. The relevant passage is as under.

….An error or law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an

error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said findings are within the exclusive jurisdiction of the Tribunal and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised.

(emphasis supplied)

The Supreme Court also considered the question as to what is error law apparent on the face of record. It was held:

It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. **In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record…. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of legal provision which is alleged to have been misconstrued or contravened.**

(emphasis supplied)

I n **H.P.Gandhi v. Gopi Nath** (supra) after referring to **Syed Yakoob v. Radhakrishnan** (supra) it was held:

Judicial review, it is trite, is not directed against the decision, but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of face. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court, Judicial review is not appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in decision making process but also on the correctness of the decision itself.

In **The Depot Manager, A.P.S.R.T.C. v. P.Gangarajulu,** the Division Bench of this Court held that High Court cannot act as an appellate authority and review or revive the findings recorded by the tribunal except when it is proved that the findings are based on “no evidence” or the Tribunal arrived at the findings based on surmises and conjectures.

In recent judgment in **State of U.P. v Johri Mal**, the Supreme Court laid down that though reappreciation of facts is not permissible in a petition for judicial review, the Court to a limited extent may scrutinise the facts to see whether decision making process is in accordance with law. The following observations of apex court are

apposite:

It is well settled that while exercising the power of judicial review the court is more concerned with the decision-making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact-finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision-maker's opinion on facts is final. But while examining and scrutinizing the decision-making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. **How far the court of judicial review can reappreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touchstone of the tests laid down by the court with special reference to a given case. This position is well settled in the Indian administrative law. Therefore, to a limited extent of scrutinising the decision-making process, it is always open to the court to review the evaluation of facts by the decision-maker.**

(emphasis supplied)

Therefore, it may be taken as well settled that a writ Court has no jurisdiction to substitute its own opinion for the opinion of Inferior Tribunal even if it is satisfied that the decision is wrong. It is also well settled that the writ Court cannot reappreciate the evidence and every wrong order cannot be quashed by issuing certiorari. In the absence of any fundamental flaws, the Court cannot exercise certiorari jurisdiction.

While considering this Writ Petition the above principles have to be kept in mind. If the oral evidence and documentary evidence brought on record by the petitioner and respondents is again reappreciated, the same would amount to exercising appellate power which is not in the province of Article 226 of the Constitution of India. If the points urged are considered purely in legal terms ignoring from the background facts, the same would not be proper. Therefore, a balance has to be struck in a matter of this nature, especially when the Constitution of India by Article 243-O, A.P.State Legislature by Section 233 of the Act ordained that an election to an office under Panchayat Raj Act can only be assailed before a duly constituted judicial authority/Tribunal, which is indisputably assigned the role of fact finding body.

In Re Point No.1.

As noticed earlier, learned Senior Counsel placed reliance on Exs.B.1, B.2, B.9, B.20, X.22 and X.23 as well as evidence of C.W.1. Ex.B.1 is a Study and Date of Birth Certificate issued by Head Master of Mandal Parishad Elementary School, who is examined as P.W.5, and Ex.B.2 is a certificate issued by P.W.6, who is Head Mistress of B.K.Prince English Medium School, Kotha Indlu, Punganur, Ex.B.9 is date of birth certificate in Form-V allegedly issued under Sections 12 and 17 of the Registration of Births and Deaths Act, 1969 by the Commissioner of Madanapalle Municipality. The Commissioner is examined as C.W.1. But, Ex.B.9 was marked by R.W.3, who is none other than the petitioner. Ex.X.20 is the admission and discharge certificate issued by Dr.Ananda Babu, owner of Vijaya Nursing Home, Madanapalle, who is examined as C.W.2 and Ex.X.24 is live birth report allegedly sent by C.W.2 to Madanapalle Municipality. The Register of Births and Deaths from

the office of C.W.1 was marked as Ex.X.22. The relevant page containing entry allegedly pertaining to third child of the petitioner is marked as Ex.23. It is the submission of the learned Senior Counsel for the petitioner that all these documents prove that third child of the petitioner was born on 16.3.1995 at Vijaya Nursing Home, Madanapalli and learned Tribunal committed error in rejecting these documentary evidence. Learned counsel for respondents 2 and 3 placed reliance on Exs.B.6, B.7, B.8, X.4, X.22, X.23 and X.24 and the evidence of P.W.4, P.W.7 and C.W.1 in support of his contention that the petitioner's third child was born on 08.07.1995 and that the learned Tribunal was justified in rejecting the documents relied on by the petitioner and accepting the documents relied on by the respondents. He also contends that the learned Tribunal relied on all the public documents and rejected the documentary evidence by giving cogent reasons and finding recorded does not call for any interference.

As noticed supra, the petitioner herein was examined herself as R.W.3 and did not lead any other oral evidence. Second respondent was examined herself as P.W.1 and third respondent as R.W.1. As these three witnesses deposed in support of the pleadings, except insofar as the admissions made by them are concerned, the evidence is not of much use. The Tribunal therefore rightly did not place much reliance on the evidence of P.W.1 and R.W.1. Besides Court witnesses – C.W.1 to C.W.3, all other witnesses P.Ws.2 to 7 were examined by the respondent Nos.2 and 3 after taking out Court summons to them. R.W.2 is the brother-in-law of the third respondent and R.W.4 is the Chief Executive Officer of Chittoor Zilla Parishad, who is the Election Officer for Chowdepalle ZPTC.

The Election Tribunal rightly addressed itself with the only question whether the third child of the petitioner Yamini Divya was born on 08.07.1995 or 16.03.1995. Ex.B.2, dated 09.12.1997, is the date of birth certificate issued by the Head Mistress of B.K.Prince English Medium School, who was examined as P.W.6. She produced Exs.X.11 to X.13 and proved Ex.B.2. The learned Tribunal rejected the evidence of P.W.6 and Ex.B.1, X.11 to X.13 on the ground that they are not public documents. A perusal of Ex.B.2 would show that as on 09.12.1997, Yamini Divya, D/o P.Rama Krishna (husband of petitioner) was student of first standard. According to Ex.B.2, Baby Yamini would be less than two and half years and it is not possible to say that she was studying first standard when she was only two years and half. P.W.5 is the Head Master of Upper Primary School, who gave Ex.B.1, study and date of birth certificate, which is dated 26.06.2001 and shows that as on that date, Yamini was studying in second class in Mandal Praja Parishad Pradamika Patashala, Marrimakulapalli, Chowdepalli Mandal. The Head Master, who deposed as P.W.5 proved Ex.B.1 and marked Exs.X.5-census register for 1994-95, (Ex.X.6 is relevant entry), Ex.X.8-census register for 2001-02, (Ex.X.9 is relevant entry). They were written in handwriting of teacher Gangi Reddy, who is none other than the father of the petitioner. Placing reliance on the decision of the Supreme Court in **Brij Mohan v Priya Brat,** the learned tribunal rejected Exs.B.1 and B.2 holding that school admission register, in the facts and circumstances of the case cannot be relied on. Therefore, the learned Tribunal rightly did not believe them in the absence of any supporting material to strengthen the veracity of Ex.B.1. P.W.5 and P.W.6 failed to

produce the original application made on behalf of Yamini Divya at the time of admission, which would have clinched the issue. This renders Exs.B.1 and B.2 useless. Ex.X.10 produced by P.W.6, which is marked, cannot be relied on because even according to P.W.6, the petitioner took away the original application for admission of the third child and submitted another application. The learned Tribunal also observed that the entries in Exs.X.8 and X.9 are different rendering them suspicious.

Exs.B.9, B.20, X.22, X.23 and X.24 are group of documents, which need to be considered together. Ex.B.9, as noticed supra, is birth certificate signed by C.W.1, which shows that the birth of Yamini Divya, a female was registered on 25.03.1995 vide registration No.621 and the date of birth is 16.03.1995. Very strong reliance is placed on this before the Lower Tribunal as well as before this Court. It is now well settled that the entries made in Register of Births and Deaths maintained during the course of official business in accordance with Registration of Births and Deaths Act, are relevant provided they reflect the true state of affairs. A reference may be made to the decision of the Supreme Court in **Birad Mal Singhvi v Anand Purohit**, wherein their lordships laid as under:

> Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record, secondly, it must be an entry stating a fact in issue or relevant fact, and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of material on which the age was recorded.

The learned Tribunal did not believe Ex.B.9 for three reasons, namely, (i) C.W.1 who signed Ex.B.9 himself stated that Ex.B.9 is not correct and Ex.B.8 (non availability certificate) signed by C.W.1 is correct, (ii) the relevant entry Ex.X.23, in the Register of Births and Deaths is tampered and action was taken against Giridhar, who prepared Ex.B.9; and (iii) Ex.X.24, which is the live birth report allegedly sent by C.W.2 (Doctor of Vijaya Nursing Home) does not bear the stamp of the Office of Municipality in acknowledgment of receipt of the same by the Municipal Office. The learned Tribunal was justified and absolutely correct in rejecting Ex.B.9. When the submission was made on the first stage of hearing, this Court has sent for the record from the Court of the Senior Civil Judge, Punganur.

A perusal of Ex.X.22, Register of Births and Deaths, would reveal the following. The Register of Births and Deaths, Ex.X.22, is in two parts. The first part contains the particulars of live births registration and second part contains the particulars of ‘still births’. Part I of Ex.X.22 contains the particulars of children born during the period from 20.12.1994 to 23.03.1995. Curiously, there is no pagination in the register. Be that as it is, after the end of particulars of births in every month, the Registrar of Births and Deaths put the stamp and signed. After the end of entry 440

also there is a stamp and signature of Registrar of Births and Deaths. Entries 441 to 452 deal with the particulars of live births, which were reported to the Registrar on 01.03.1995. Entries 453 to 632 deal with the particulars of live births during March, 1995. At the end of the entries, the signature of the Registrar of Births and Deaths and Commissioner of Municipality is conspicuous by its absence. Secondly, the relevant page, which is marked as Ex.X.23 in Ex.X.22 contains the particulars of entries 617 to 632. The entry 621 allegedly relates to the birth particulars of the third child of the petitioner. The particulars in relation to entry 617 to 620 and 622 to 632 in Ex.X.23 are in the same handwriting. Be it noted, there are twenty five (25) columns in the register. All the columns are in the same handwriting including the signature of P.V.Sai Srinivasa Murthy, presumably the Sub Registrar of Births and Deaths. Insofar as entry 621 is concerned, the columns 3,5,6,8,9,13,21 and 22 are in different handwriting and different ink. These relate to, in that order, the name of the child (R.Yamini), the place of birth (Vijaya Nursing Home), the name of the father (P.Ramakrishna), literacy of father (5^{th}), name of the mother (R.Jayalakshmamma) and name of informant and address (Dr.Anand Babu – Vijaya Nursing Home). Column 3 relates to date of birth. There is overwriting on number 16. Even with a naked eye, it appears these entries, which are relevant to the disputed fact in issue, are tampered when compared with other entries in the register Ex.X.22 or the relevant page Ex.X.23. When the information is sent by the Doctor or the Hospital, which delivered the baby, the signature of the father is not taken. Quite abnormally in column 23, the signature of the husband of the petitioner is found. This is not properly explained though the Doctor, C.W.2 deposed that it is he, who has sent Ex.X.24 – live birth report; based on which the birth of third child of petitioner was registered. If what C.W.2 says is correct, there was no necessity for the signature of the husband of the petitioner in column 23. Be that as it is, the C.W.2 brought to the Court a file containing the office copies of live birth reports signed by the Doctor or hospital in Form II under Rule 3 of Registration of Births and Deaths Rules, 1969. This Court has perused the same and the veracity of Ex.X.24 has to be doubted. The reasons are mentioned in the next paragraph.

The file containing live birth reports with the serial number, the signature of the informant and the stamp of the municipality to which information is sent. C.W.2 or his hospital has given serial number to some of the reports and for some there is no serial number. Even for Ex.X.24, the serial number is not given. It bears the date 20.03.1995, whereas the particulars in entry 621 were made on 25.03.1995. Thirdly, the age of the mother is mentioned as 25 years in entry 621 whereas in Ex.X.24, age of mother is mentioned as 33 years. Fourthly, C.W.2 was examined on 19.11.2003 almost after eight years of the alleged birth of the third child of the petitioner in his nursing home. All the office copies of live birth reports signed by C.W.2 and its hospital look very old, discoloured and almost soiled, but miraculously Ex.X.24 retains its freshness and lastly there is a stamp of Madanapalli Municipality acknowledging the receipt of live birth report, in all the live birth reports except Ex.X.24. This is not properly explained either by R.W.3 or C.W.2.

From a reading of Exs.B.9, X.24, X.22 and X.23 and the evidence of C.W.1 and C.W.2, it cannot be said Ex.B.9, birth certificate is a document, which is

permissible under Section 35 of the Evidence Act. Indeed, the documents mentioned hereinabove though admissible, they lack probate value in view of various reasons mentioned hereinabove. In any view of the matter, the veracity and the genuineness of these documents cannot be vouchsafed. In a Court of Law, evidence means evidence which is unimpeachable and on balancing the probabilities, the court can safely draw conclusion as to existence of fact. These documents suffer from incurable defects and any amount of forensic skill cannot release them from the grip of doubt and suspicion. Yet another reason for coming to the above conclusion is, C.W.1, who is the author of Ex.B.9 as well as Ex.B.8. He disowned Ex.B.9 and deposed that Ex.B.8 is correct. In his own words:

> I have brought the Birth Register Ex.X-22 is the Birth Register for the year 1995. Col 5 of the Register pertains to name of the child. In the page pertaining to Sl.No.617 to 632 at Sl.No.621 name of the child is written as 'R.Yamini' with relates to other Sl.Nos name of the childredn are not mentioned. Relevant Entry is Ex.X23. In col.No.3 pertaining to date of birth with relates to Sl.Nl.621 there is over writing with relates to date (16) At Sl.Nos.617, 618 dates of birth of the children are mentioned 17-3-1995,
> 17-3-1995, Sl.Nos. 619, 620 dates birth 18-3-1995. Sl.Nos.622, 623 are having dates of birth on 20-3-1995 Column No. 6 in the register is the date of birth of birth of child.
>
> ... In Ex X-24 Sl.No.s is not there. In other intimations for some intimation there is Sl.Nos. some intimations there are no Sl.Nos. There is difference with relates footnote in Ex X-24 compared to other intimations. For issuing birth certificate amount has to be remitted by way of challan. By looking at Ex.B-91 I cannot say whether amount is remitted by way of challan for issue of certificate. In routine manner on submission of necessary records with Ex B-9 I signed on it. The sub-Registrar concerned C.V.Giridhar prepared original of Ex.B-8 and Ex. B-9. As per the records maintained in our office. Entries in Ex.X-23 Sl.No.621 appears to be tampered Co.1 No.7 pertains to the residential address of the parents of the child is mentioned as Madanapalle. Entries in the original of Ex B-8 are correct and not the entries in Ex B-9.

The above evidence of C.W.1 also clinchingly shows that the documents relied on by the petitioner do not support the case of the petitioner. The case of the petitioner was that as per Ex.X.20, she was admitted to Vijaya Nursing Home for delivery on 13.03.1995 that she delivered third child on 16.03.1995 and she was discharged from the hospital on 19.03.1995. C.W.2 – the Doctor of Vijaya Nursing Home states that Ex.B.20 belong to his nursing home though he was asked by Court summons to produce the register relating to delivery cases, he stated that he did not bring any register as he has not maintained them. Ex.B.20 is the xerox copy and no proper explanation is given as to why the original was not produced. Further, even according to C.W.2, Ex.B.20 is not based on any register relating to delivery cases and the same cannot be believed. In her oral evidence as R.W.3, the petitioner stated that she delivered baby, third child, on 16.03.1995 and she was discharged on the next day after delivery. She also admitted that she was administered that she attended oath taking ceremony on 18.03.1995 and took oath as M.P.T.C. Member, after getting discharged on 17.03.1995. The contents of Ex.B.20 and her oral evidence are at variance. Third respondent produced Exs.B.13 to B.16 -photographs taken on the occasion of the oath taking ceremony. The petitioner as R.W.3 admitted these photographs and when she was asked whether she appeared to be pregnant, she stated that as a precautionary measure she tied a saree around her stomach. A look at the photographs Exs.B.13 to B.16, would make it clear that on 18.03.1995, the petitioner was pregnant. With these, the case of the petitioner falls flat and

cannot be believed that she delivered baby on 16.03.1995 and attended on 18.03.1995.

The election of the petitioner was assailed on the ground that she incurred disqualification under Section 19(3) of the Act. The burden of proof lies on her because as per Section 102 of the Evidence Act, the burden of proof in a suit or proceeding lies on that person, who would fail if no evidence at all were given on either side. Assuming that the respondents 2 and 3 did not produce any evidence to prove that case, it is the petitioner who would not succeed in the case if she fails to prove that her child was born within one year from the date of coming into force of the Act. As rightly pointed out by the learned Senior Counsel, the disqualification under Section 19(3) of the Act would disqualify petitioner once for all in her lifetime to seek election for any office or post under the Act. Therefore, this Court has examined the original record and is of considered opinion that the petitioner has failed to discharge the burden in accordance with law and the learned Tribunal was justified in rejecting the evidence adduced by the petitioner. Be it also noted that after parties lead their evidence burden of proof is not much of relevant, and entire evidence has to be considered. The learned tribunal did that and came to conclusion that petitioner's third child would not have been born on 16.03.1995. After examining the evidence on record, this court does not see any valid ground to differ with learned election tribunal.

Insofar as the evidence produced by the respondents 2 to 3 is concerned, the learned counsel for the respondents 2 to 3 placed strong reliance on Exs.B.6 to B.8, X.4, X.14 to X.24 as well as oral evidence of P.W.4 and P.W.7. A brief reference to these documents would be necessary to appreciate the contention of the learned counsel for the respondents 2 to 3 that the petitioner's third child was born at Vijaya Nursing Home, Punganur on 08.07.1995 and therefore the petitioner is disqualified as per Section 19(3) of the Act. R.W.2, who is brother-in-law of R.W.1 (third respondent herein) made an application Ex.B.6 to Madanapalle Municipality requesting for a certified copy of the date of birth certificate of the third child of the petitioner, allegedly born on 16.03.1995 duly paying an amount of Rs.15/- (Rupees fifteen only) vide challan, Ex.B.7. The Commissioner of Madanapalli Municipality, C.W.1 verified the records and issued Ex.B.8 "Non Availability Certificate". There is nothing wrong in presuming that Ex.B.8 reflects the true state of affairs in that before issuing Ex.B.8, a search was made by the Office of the Municipality in the registration records relating to the year 1995 and it was found that the birth of the third child was not registered in March, 1995. Indeed, C.W.1 in his deposition admits that Ex.B.8 is correct. This is a strong circumstance and on balancing of probabilities, it cannot be said the third child of the petitioner was born on 16.03.1995. P.W.4 is Mandal Education Officer, who brought District Primary Education Project (DPEP) survey particulars of Marrimakulapalli habitation. The same was conducted by a teacher Ms.S.Rani. It also contains Ex.X.4, which is the Form relating to the particulars of the three children of the petitioner. After ascertaining particulars the signature of the husband of the petitioner was obtained. The same would show that the date of birth of Yamini is 08.07.1995. The submission

made by the petitioner herein before the tribunal was that Ex.X.4 is only sheet of paper and does not form part of the record and therefore cannot be relied on. The Tribunal correctly rejected the contention holding that though Ex.X.4 is a sheet, which forms part of the compilation - official book; made after conducting door to door DPEP survey.

The next set of documents are the registers and relevant entries marked and proved by P.W.7, who was at the relevant time, Multi purpose Health Assistant, Primary Health Center, Chowdepalli at Pedakondamarri Sub Centre having jurisdiction over Marrimakulapalli and other villages. It is not in dispute that the petitioner and her family (indeed she admits in the evidence) stayed in Marrimakulapalli before they shifted to Punganur. P.W.7 was examined on Court summons. She marked date of birth register Ex.X.14 and relevant entry Ex.X.15 showing the birth of the third child of the petitioner at Vijaya Nursing Home, Punganur on 10.07.1995. P.W.7 also brought sterilization register, Ex.X.16 (Ex.X.17 is the relevant entry), Ante Natal Register, Ex.X.18 (relevant entry Ex.X.19) and the Vaccination or Immunisation Register, Ex.X.20 (relevant entry X.21). All these registers pertain to the year 1995 showing that the child of the petition was born on 10.07.1995, that the petitioner underwent sterilization operation on 14.07.1995 and also showing that as on that date the child was five days old, that the child was administered B.C.G. Vaccination and D.P.T.Vaccination. P.W.7 maintained Exs.X.14, X.16, X.18 and X.20 in her own handwriting and in a lengthy cross examination, she stood her ground. These registers are maintained during the course of official business of a Mutli purpose Health Assistant of Primary Health Centre and unless any motive is attributed to the evidence of P.W.7 and the registers and entries marked by her cannot be lightly thrown away. Though in Ex.X.14 (the relevant entry Ex.X.15) shows the date of birth is 10.07.1995, it makes no difference, as long as the birth is in July, 1995 for whether the birth is on 08.07.1995 or 10.07.1995, the same has no effect on the disqualification incurred by the petitioner. This Court has carefully perused these registers and is not able to countenance the submission of the learned Senior Counsel that they lack probative value. These registers, be it treated, taken together with Ex.B.8, the evidence of C.W.1 would show that the third child of the petitioner was not born on 16.03.1995 and was born in July, 1995. This Court also is of considered opinion that the learned Senior Civil Judge in appreciating evidence in drawing inference from the evidence and applying the principles of law in appreciating evidence, has not committed any grave error, much less grave error apparent on the face of record. The Tribunal has acted within its jurisdiction in accepting the evidence adduced by the respondents 2 and 3 and rejecting the evidence relied on by the petitioner. As observed in the beginning of this judgment, the reappreciation of the evidence or facts is ordinarily not permissible while exercising Certiorari jurisdiction. However, this Court has summoned the original records and after examining the record, is satisfied that the impugned order does not suffer from any infirmity requiring judicial review. The point is answered accordingly.

In Re Point No.2

The learned Senior Counsel finds faults with the order of the learned Counsel

declaring the third respondent as elected Member of ZPTC, Chowdepalle. He submits that when there is a margin of four thousand votes between the elected candidate and the next candidate, the Tribunal ought to have ordered reelection. Reliance is placed on the judgment of the Supreme Court in **Prakash Khandre v. Dr.Vijay Kumar Khandre** (supra). Such submission was rejected by the learned Tribunal. The observations of the learned Tribunal are as under:

Since more than half of the term of five years is completed, no purpose will be served if fresh election is ordered as it involves enormous expenditure for public exchequer and the ZPTC Constituency will remain unrepresented for considerable period. The petitioner in O.P.No.12/2001 has not sought for declaration of herself as elected candidate and also further that she has secured the votes less than the petitioner in O.P.No.14/2001, she is not entitled for any such declaration. The petitioner in O.P.No.14/2001 having secured the second highest votes is entitled to seek herself declared as elected candidate. In the decisions reported in 2003(5) ALT – 1 – BHUKYA BUJJI Vs. BHUKYA SARASWATHI AND OTHERS and 2003(1) ALD 488 – J.PUSHPALATHA Vs.ELECTION TRIBUNAL, BHONGIR, NALGONDA DISTRICT AND OTHERS – the Tribunals have declared the Election of the elected candidate as null and void and also declared the respective petitioners therein as Elected candidates and the same was not questioned before the Hon'ble High Court. In those cases also elections were challenged on the ground that elected candidate gave birth to third child after 21.04.1995. As such, this point is answered in favour of the petitioner in O.P.No.14/2001 and against the first respondent.

To appreciate the contention of the learned Senior Counsel, it is necessary to refer to Rules 12, 13 and 15 of the Rules. These Rules read as under:

12. If in the opinion of the Election Tribunal,

(a) that on the date of his election, a Returned Candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Act, or

(b) that any corrupt practice as laid down under Section 211 of the Act has been committed by a Returned Candidate or his election agent or by any other person with the consent of the Returned Candidate or his election agent, or

(c) that any nomination has been improperly rejected, or

(d) that the result of the election, in so far as it concerns a Returned Candidate has been materially affected,

i. by the improper acceptance of any nomination, or

ii. by any corrupt practice, committed in the interest of the Returned Candidate by an Agent other than his election agent, with the connivance of the Returned Candidate, or

iii. by any improper reception, refusal, or rejection of any vote, or the reception of any vote which is void,

iv. by any non-compliance with the provisions of the Act, or any Rules or Orders made under the Act.

(A) The Election Tribunal shall declare the election of the Returned Candidate to be void.

(B) If the Election Tribunal holds the Returned Candidate guilty under clause (b) and clause (d) (ii) of this rule, the Election Tribunal shall in addition to declare the election of the Returned Candidate as void, shall also declare that the Returned Candidate shall be disqualified to contest in any elections under this Act, for a period of six years from the date of the order.

13. If any person who has lodged a petition, as in addition to calling in question, the election of the Returned Candidate, claimed a declaration that he himself, or any other candidate, has been duly elected and the tribunal is of the opinion-

(a) that in fact, the petitioner or such other candidate, received the majority of the valid votes, or

(b) that, but for the votes obtained by the Returned Candidate, by corrupt practices, the petitioner or such other candidate would have obtained, a majority of the valid votes, the election tribunal shall after declaring the election of the Returned Candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.

15. (i) At the conclusion of the inquiry, the Election Tribunal shall declare whether the election of the Returned Candidate or Candidates is void under Rules 12 and 13.

(ii) if he declares the election of the Returned Candidate or Candidates void, he shall further pass an order either-

(a) declaring that any other party to the petition who has under these Rules claimed the seat has been duly elected; or

b. order a fresh election.

(iii) The order of the Election Tribunal under sub-rules (i) and (ii) shall be final;

(iv) A copy of every order under sub-rule (i) or sub-rule(ii) shall be communicated to the Executive Authority of the Gram Panchayat, Mandal Parishad and Zilla Parishad, as the case may be, and the Election Authority.

An election to any office under the Act can be challenged on any of the grounds mentioned in Rule 12 of the Rules, namely, (i) that as on the date of election, the returned candidate was not qualified or was disqualified to be chosen to fill the seat under the Act, (ii) that the returned candidate committed corrupt practices as laid down under Section 211, (iii) that any nomination has been improperly rejected or accepted and (iv) that the result of the election, insofar as the returned candidate is materially affected by improper acceptance of nomination or corrupt practice or improper rejection or the election is vitiated by non-compliance with the provisions of the Act and the Rules. As per Rule 12(A) of the Rules, if the Election Tribunal comes to the conclusion that the election of the Returned Candidate is vitiated by any of the above grounds, Election Tribunal has no discretion except declare the election of the returned candidate as void. It is also within the power of the Election Tribunal under Rule 12(B) to declare the Returned Candidate as disqualified to contest the election under the Act. Rule 13 of the Rules applies to a situation where a petitioner not only calls the election of returned candidate in question as void but also seeks a declaration that he himself or any other candidate has been duly elected. In such a situation, the law requires Election Tribunal necessarily to declare the election petitioner to have been duly elected. The only condition, as stipulated under Rule 13(a) of the Rules is that the election petitioner received majority of the valid votes. What is important is the next candidate must have received majority of the valid votes, which means that excluding the returned candidate, whose election is declared void, among other remaining candidates, the petitioner or some other candidate must have secured majority of the valid votes. Rule 15 of the Rules is essentially procedural in nature and requires

Election Tribunal after conclusion of the enquiry (i) to declare the election of the Returned Candidate or Candidates void, (ii) to declare any other party to the petition has been duly elected and/or (iii) to order fresh election.

On a true construction of Rules 12, 13 and 15, it becomes clear that when a case falls under Rule 13, the Election Tribunal has no option but has to declare the election petitioner who received majority of the valid votes as duly elected. That is the purport of Rule 15 of the Rules. When the Election Tribunal has acted as per law as interpreted hereinabove, no exception can be taken for the same. The decision cited by the learned counsel in **Prakash Khandre v. Dr.Vijay Kumar Khandre** (supra),arose in the context of Sections 53, 84 and 101 of the Representation of the People Act, 1951 and therefore would have no application to the facts of this case. Further more, there are only three candidates in the fray. Between respondents 2 and 3, the second respondent did not seek declaration under Rule 13 of the Rules. That means only third respondent Ms.Chandravadana is the only candidate with majority of votes polled. The contest, in such an event, can be assumed to be the contest only between the petitioner and the third respondent. In which event, the principle canvassed by the learned Senior Counsel has no application.

Conclusion

In the result, for the above reasons, this Court finds no illegality, irrationality or impropriety in the impugned order in O.P.Nos.12 of 2001 and 14 of 2001, dated 03.08.2004 passed by the learned Election Tribunal – Senior Civil Judge, Punganur. No case is made out for interference with the well considered elaborate order passed by the learned Election Tribunal. The writ petitions are therefore dismissed without any order as to costs.

_____

(V.V.S.RAO,J)

27.08.2004.

bnr/pln

Note: LR Copy to be marked.

By Order

Bnr/pln

ASSISTANT REGISTRAR

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SECTION OFFICER

To

One fair copy to the Hon'ble Mr.Justice V.V.S.Rao (for his Lordships kind perusal)

1. The Election Tribunal-cum-Senior Civil Judge, Punganur, Chittoor Dist.

2. Election Officer-cum-Chief Executive Officer, Zilla Parishad, Chittoor.

3. Election Officer, Chowdepally Mandal, Chittoor Dist.

4. 8 LR copies.

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